THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.20351 of 2003

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 28-03-2007

Between:

Mr.M.Sriramulu and 7 others .. Petitioners

and

Pourshotham Reddy and 22 others .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.20351 of 2003

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The instant writ petition is directed against a judgment and decree, dated 30-04-2002, passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, (for short, 'the Act') in L.G.C.No.183 of 1996. The unsuccessful petitioners are now seeking a writ of Certiorari to quash the said judgment.

The case of the petitioners was that the first applicant, who since died applicants 2 to 8 have been brought on record as legal representatives, purchased Acs.12.17 guntas of land out of Acs.12.20 guntas covered by Sy.No.210 of Kothapet village, L.B.Nagar Municipality, Uppal Mandal, under a registered sale deed, dated 24-06-1967, and that after dividing Acs.6.07 guntas of land, out of the total extent, into plots, he sold away that land with the assistance of the tenth respondent herein as his General Power of Attorney Holder, executed on 18-02-1978, of himself and his two major sons and retained the remaining extent of Acs.6.10 guntas of the land. Subsequently, he revoked the General Power of Attorney executed by

him in favour of the tenth respondent. The respondents 1 to 9 in collusion with the tenth respondent entered into illegal agreements and also executed documents without any authority in favour of third parties in respect of a portion of the 'A' schedule mentioned property appended to the petition. The tenth respondent executed a sale deed in favour of the eighth respondent herein in respect of 300 square yards of site in 'A' schedule mentioned property, which is separately shown as 'B' schedule appended to the petition. Further, respondents 1 to 9 attempted to grab some more land and the family members of the first applicant protested on 06-11-1996. The first respondent and others beat them and in that connection Police registered a crime under Section 324 of the Indian Penal Code. The respondents are, therefore, liable to be evicted from the 'B' schedule mentioned property and restrained from grabbing any part of the 'A' schedule mentioned property.

The case against the first respondent was abated. Subsequently, the case against the respondents 2 and 6 was withdrawn and dismissed. Third and fourth respondents remained ex parte. Fifth respondent appeared in person, but the application was dismissed as against him. Respondents 7, 8 and 9 remained ex parte. Tenth respondent died and his legal representatives were brought on record as respondents 11 to 17. Respondents 12 and 15 contested the application, whereas respondents 13, 14 and 16 remained ex parte. Seventeenth respondent filed a memo adopting the counter of respondents 12 and 15. Respondents 18, 19 and 20 were brought on record on an application filed by the applicants in I.A.No.129 of 1999 by means of an order, dated 28-07-1999. Respondents 18 and 19 filed counters separately and respondent No.20 adopted the counter filed by the eighteenth respondent. Respondents 21 to 23 were also brought on record separately after the Commissioner filed his report and they remained ex parte.

The case of the respondents 12 and 15 was that they

purchased a property by means of a registered sale deed, dated 22-12-1995, executed by the General Power of Attorney of the first applicant and by then General Power of Attorney was subsisting and the subsequent revocation of the General Power of Attorney without issuing notice to them was not valid.

The case of the eighteenth respondent was that he purchased 200 square yards of site in plot No.14 from, one, Sriramulu under an agreement of sale, followed up by a registered sale deed, dated 31-12-1992 and constructed a building thereon.

The case of the nineteenth respondent was that his predecessor in title purchased plot bearing No.4 in an extent of 217 square yards in the year 1978 and in turn he purchased a plot in the year 1994 under registered sale deed, dated 08-07-1994, on a consideration of Rs.1,46,000/- and that he was the fifth predecessor in the line. Originally, the house bearing No.9-5, constructed in plot No.4, was purchased by one, K.Raju Ramachandra Murthy in the year 1978 from the tenth respondent and from whom, Smt.G.Lalitha Devi purchased the said property in the year 1979. She in turn sold the said property to one, Ramagiri Prabhakara Rao in the year 1981, who in turn sold the said property to one, S.V.D.Samuel in the year 1982. The said Samuel sold the said property to P.Yeshoda in the year 1988, from whom the nineteenth respondent purchased the property. There has been house from the year 1979 in the said property and therefore he was not a land grabber.

The learned Special Court framed the following issues at the time of the settlement of issues:

"1. Whether the applicant has title to the application schedule property?

2. Whether the rival claim set up by the respondent is true?

3. Whether the applicants are entitled for permanent injunction as prayed for by them with regard to "A" schedule property?

4. Whether the applicants are entitled for possession of schedule "B" of the application schedule property?

5. Whether the respondents are land grabbers within the meaning of Section 2 (d) and (e) of the A.P. Land Grabbing (Prohibition) Act, 1982?

6. Whether the respondents are liable to be prosecuted of the offence punishable under A.P. Land Grabbing (Prohibition) Act of 1982?

7. To what relief?"

During the course of enquiry, one of the applicants was examined as P.W.1, besides getting Exs.A1 to A10 marked. Three witnesses were examined on the side of the respondents, besides getting Exs.B1 to B5 marked. Appreciating the evidence on record, the learned Special Court was of the view that having regard to Exs.A1, A4 to A10, the applicants established that the first applicant purchased Acs.12.17 guntas of land under the original of Ex.A1 sale deed. However, the learned Court was of the view that the burden was heavy on the applicants to show that the respondents 3, 4, 5, 7, 8, 9 and 18 to 23 grabbed the application schedule property. The learned Court was of the further view that respondents 21 to 23 did not grab any part of the application schedule property. Ultimately the learned Court was of the view that the applicants failed to prove that the respondents 3, 4, 5, 7, 8, 9 and 18 to 23 grabbed any part of the application 'A' schedule property or 'B' schedule property, the rival titles set up by the 19th respondent was true and respondents were not the land grabbers and eventually dismissed the application.

Sri D.Seshadri Naidu, learned counsel appearing for the writ petitioners, represents that the learned Special Court oblivious of the mandatory provision of Section 10 of the Act, reached the conclusion that the burden was heavy on the applicants to prove that the respondents were the land grabbers, more particularly having held that the applicants, having purchased the petition 'A' and 'B' schedule mentioned properties, were owners thereof. It is his further representation that the main contestant being respondent No.19, he failed to show that he was not a land grabber and therefore the application deserves to be allowed.

The respondents although appeared through their counsel initially; later, neither respondents nor their counsel represented the

matter before this Court.

We have heard the arguments of the learned counsel appearing for the writ petitioners. All the respondents, who have been served, are, therefore, set ex parte.

The property in dispute has been shown separately as 'A' and 'B' schedules appended to the application. "B" schedule, obviously, is a part of the 'A' schedule. The land was originally belonged to one, Dontham Sivaiah and Brahmaiah. The father of the first applicant purchased the entire extent of Acs.12.17 guntas under registered sale deed, dated
24-07-1967. Ex.A1 is the registration extract of the said sale deed. The names of the original owners as per the enquiry conducted by the Mandal Revenue Officer were shown as the pattadars in the pahanies pertaining to Kothapeta village, although there appears to be some discrepancy as regard the surname of the said Sivaiah and Brahmaiah. The enquiry eventually revealed that those two persons were the original owners of the land in dispute. There have been no other rival claimants for the said land *qua* the said Sivaiah and Brahmaiah. Thus, it is beyond doubt that the first applicant's father purchased validly the land covered by 'A' and 'B' schedules appended to the application from the said Sivaiah and Brahmaiah, the original owners. Ex.A4, pattadar passbook, was given to the first applicant. The name of the first applicant was duly mentioned in the R.O.R. as could be seen from Ex.A6. Ex.A7 pahani shows the name of the first applicant as the owner and enjoyer. Exs.A8 to A10 are the land revenue receipts, whereunder he paid the land revenue for the land in dispute. Thus, the unimpeachable evidence filed before the Court in Exs.A1 to A10 clearly establishes that the first applicant was the owner of the property in dispute. In that view of the matter, the conclusion reached by the learned Special Court that the applicants enable to prove their title cannot be found fault with. In fact, it is not being disputed before us by any of the respondents, who remained ex parte.

Having thus found that the applicants are the owners, erroneously the learned Special Court placed the burden upon the applicants to show that the respondents are the land grabbers.

Section 10 of the Act is the provision germane in the context and it reads as under:

"**10.Burden of proof:--** Where in any proceedings under this Act, a land is alleged to have been grabbed, and such land is *prima facie* proved to be the land owned by the Government or by a private person the Special Court or as the case may be, the Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber and the burden of proving that the land has not been grabbed by him shall be on such person."

A mere glance at the said provision shows obviously that by means of a *prima facie* evidence, if the applicant is able to show before the Court that the land in dispute is owned by him, the Court shall presume that the persons who alleged to have grabbed the land are land grabbers and it is for them to prove before the Court that they have not grabbed the land. This provision has obviously been overlooked by the learned Special Court. No evidence worth the name has been adduced by the

19th respondent or as a matter of that any of the respondents, who have contested the matter before the learned Special Court. A Commissioner was appointed by the learned Special Court. The Commissioner, who inspected the property in question, mentioned unequivocally *inter alia* in his report that respondents 21 to 23 encroached different bits of lands in the application 'B' schedule mentioned property. The nineteenth respondent, the main contestant, is said to have purchased the property under Ex.B1 sale deed from Smt. P.Yashoda. However, the grievance of the applicants was that he was in occupation of the property, which is more than what he purchased under Ex.B1 and therefore to the extent of excess land found to be in his possession, he was a grabber. The report of the Commissioner shows that nineteenth respondent was in occupation of

more land than the extent he purchased under Ex.B1; that extent being 100 square yards of site, this can be seen clearly from the report filed by the Commissioner, who was examined as R.W.3. There are no compelling circumstances for us to disbelieve the testimony of R.W.3, who is an independent witness and has no interest whatsoever in the lands in dispute or in the result of the case. The learned Special Court was swayed by only one fact that after the report submitted by the Commissioner, which revealed the encroachment of respondents 18 to 23, the application was not suitably amended and therefore there was no plea of the applicants *qua* the subsequently added respondents.

Plea shall have to be construed in a harmonious way and at any rate it is being purely a procedural one, shall not defeat the interest of justice. The evidence on record i.e., the evidence of P.W.3, the Commissioner and his report, which buttresses the evidence, clearly shows that the respondents 18 to 23 have been in possession of different bits of land, which have been demarcated and shown in the plaint annexed to the report. This clear evidence cannot be ignored on the mere premise that there has been no consequential amendment to the application after the Commissioner filed his report into the Court. The prayer made *inter alia* in the application is that the respondents are the land grabbers. That prayer, if properly construed, would equally apply to the subsequently added respondents too. Thus, the Special Court in having placed the burden on the applicants to show that the respondents were the land grabbers and in reaching the conclusion that there has been no specific plea in the application by suitably amending the application after the report filed by the Commissioner and hence for want of the necessary amendment, the applicants were not entitled to any relief, committed a grave mistake. That mistake makes the impugned judgment as invalid. We see sufficient force in the contention of the learned counsel for the writ petitioners that the judgment is vitiated on account of the two illegalities committed by the Special Court, as discussed hereinabove.

For the above reasons, the Writ Petition deserves to be allowed. In the result, Writ Petition is allowed and the impugned judgment of the learned Special Court is hereby set aside and L.G.C.183 of 1996 is allowed as prayed for. But, under the circumstances, there shall be no separate order as to costs.

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T.CH.SURYA RAO, J.

28th March, 2007.

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